

# **EXHIBIT D**

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JOHNNIE P UNDERWOOD,  
RITA Y VASQUEZ,  
SYLVIA VEGA,  
DALIA VELA,  
JOHN M VELA,  
MIKE C VELA,  
PAULA K WALKER,  
CYNTHIA WASHINGTON,  
DOROTHY WASHINGTON,  
WILLIAM H WASHINGTON,  
JAMES WASHISNGTON,  
ANTHONY V WATSON,  
LEONARD WATSON,  
MARY E WATSON,  
VIVIAN WATSON,  
BILLY GENE WILEY,  
DONALD R WILEY,  
HENRY WILEY,  
WILLIE WILEY,  
CLIDY MAE WILLIAMS,  
DAVID WILLIAMS,  
EDWARD J WILLIAMS,  
ETTA J. WILLIAMS,  
FAFFY RENAE WILLIAMS,  
FREDDIE WILLIAMS,  
FREDDIE J WILLIAMS,  
JOHNNIE B WILLIAMS,  
MARY WOODFORK WILLIAMS,  
RUBY J WILLIAMS,  
TERRANCE WILLIAMS,  
ANTHONY G WILSON,  
BARBARA A WILSON,  
CARON WILSON,  
ERIC WILSON,  
FLORENCE GENTRY WILSON,  
LAKIETRA R WILSON,  
MINNIE WILSON,  
TYSON WILSON,

DELOISE M WISE,  
MARTIN WISE SR,  
LELISHA WISEMAN,  
STACIE WOODBERRY,  
CLARA WOODFORD,  
JONAS WOODFORK,  
JAYCEE YOUNG,  
TERRANCE YOUNG,

PLAINTIFFS,

V.

KOPPERS INDUSTRIES INC.,  
A FOREIGN CORPORATION  
THE BURLINGTON NORTHERN  
SANTA FE RAILWAY COMPANY,  
A FOREIGN CORPORATION;  
MONSANTO COMPANY, A FOREIGN  
CORPORATION; THE DOW  
CHEMICAL COMPANY, A FOREIGN  
CORPORATION, AND  
VULCAN MATERIALS COMPANY,  
A FOREIGN CORPORATION,  
DEFENDANTS

CIVIL ACTION NO: A 05 CA 464 SS

PLAINTIFFS DEMAND  
TRIAL BY JURY

**PLAINTIFFS' SECOND AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF THE COURT:

COME NOW Plaintiffs, complaining of Defendants Koppers Industries, Inc., The Burlington Northern Santa Fe Railway Company, Monsanto Company, The Dow Chemical Company and Vulcan Materials Company and file this their second amended complaint.

**I.  
PARTIES**

1. Plaintiffs, whose names are listed on Exhibit "A" hereto and fully incorporated herein, have standing and capacity to file suit. Plaintiffs are African-American individuals and minors who formerly or presently live within close proximity of the site in



question and/or who were former employees of Defendants who operated the site.

2. Defendant, Koppers Industries, Inc. (hereinafter "Koppers") is a Pennsylvania corporation. Koppers has answered herein.

3. Defendant Burlington Northern and Santa Fe Railway Corporation (hereinafter "BNSF") is a Delaware corporation. BNSF has answered herein.

4. Defendant Monsanto Company (hereinafter "Monsanto") is a Delaware corporation. Monsanto has answered herein.

5. Defendant The Dow Chemical Company (hereinafter "Dow") is a Delaware corporation. Dow has answered herein.

6. Defendant Vulcan Materials Company (hereinafter "Vulcan") is a New Jersey corporation. Vulcan has answered herein.

## II.

### JURISDICTION AND VENUE

7. This court has jurisdiction pursuant to 28 U.S.C. § 1331 because the suit involves a federal question. Specifically, this court has exclusive jurisdiction over Plaintiffs' claim pursuant to 42 U.S.C. §§ 1981, 1982, 1983, 1985(3), 2000d and 3604.

8. This court has venue because a substantial part of the events or omissions giving rise to the claim occurred in Somerville, Texas.

## III.

### DISCOVERY RULE

9. Plaintiffs herewith plead the discovery rule, specifically that in response to, and as an affirmative defense to any such pleas of statute of limitations as may be made, Plaintiffs allege and assert that they neither discovered, nor should have discovered the claims or facts underlying the claims outside of the limitations periods. The discovery rule,

as defined by *Woods vs. Mercer*, 769 S.W.2d 515 (Tex. 1988), specifically means that the Plaintiffs did not discover nor could have reasonably discovered they had a potential cause of action for their personal injury and other damages until such time as they obtained information or facts to put them on notice of same, and accordingly now plead the discovery rule as an affirmative defense to any statutes of limitations assertions plead now or in the future by Defendants.

#### IV.

#### STATEMENT OF FACTUAL ALLEGATIONS

10. Defendant BNSF operated and Defendant Koppers operates a wood treatment facility in and near Somerville, Texas (hereinafter "the Facility"). The Facility occupies a 200-acre tract of land approximately one mile northwest of the intersection of Highway 36 and FM 1361 on the northeastern edge of the city of Somerville in Burleson County, Texas. Koppers and BNSF and their predecessors are hereinafter referred to from time to time as "Wood Treatment Defendants."

11. Wood Treatment Defendants used toxic chemicals to produce treated railroad ties and other chemically treated specialty wood products for the railroad industry. Under pressure and heat, creosote and other pesticides would infuse the railroad ties and displace water in the wood, thus impregnating the railroad ties with the chemicals. Wood Treatment Defendants purchased and used a chemical known as pentachlorophenol, in addition to coal tar creosote, to treat the railroad ties.

12. Defendants Monsanto, Dow and Vulcan (hereinafter "Penta Defendants") manufactured and sold to Wood Treatment Defendants products containing pentachlorophenol, otherwise known as "penta".

13. Plaintiffs have been exposed and continue to be exposed to the toxic

chemicals from the Facility used to treat these wood products. At some point in time unknown to Plaintiffs, these chemicals began to contaminate their bodies, real property and homes.

14. The chemicals have contaminated Plaintiffs' bodies, homes and real estate, places of business and public schools in the area. Further, the chemicals have contaminated the air, ground, and water resources of Somerville, Texas. As a consequence, Plaintiffs suffer from diseases and personal injuries and have been placed at an unacceptably high risk for serious and life threatening diseases in the future.

15. Plaintiffs, therefore, state the following causes of action against Defendants named above to recover compensation for personal injury, property damage, ~~civil rights violations and environmental damage caused by the aforesaid toxic~~ contamination. In connection therewith, plaintiffs also seek to recover the monetary costs of cleaning up the aforesaid contaminated property and environment.

16. In addition to the recovery of monetary damages, Plaintiffs further seek through this civil action equitable relief in the form of a court established and supervised fund to pay for medical monitoring of the plaintiffs and those similarly situated. Plaintiffs seek further equitable relief in the form of an injunction to enjoin the further contamination of Plaintiffs' homes, properties, persons and businesses and the Somerville environment by Defendants' manufacture, distribution and use of the toxic chemicals.

17. Plaintiffs owning property in Somerville area owned this property during the time period in which contamination to the properties commenced and/or have been assigned the rights to any cause of action that could have been asserted by any predecessors in title to their respective properties.

18. Plaintiffs have experienced one or more of the following during the time periods relevant hereto:

a. Intermittent flooding of their property with surface water running from the contaminated Kopper's railroad tie treatment facility.

b. Intermittent flooding of their property from Thompson Creek and other natural drains with receive contaminated surface water flowing from the aforesaid railroad tie treatment facility.

c. Treated wood provided to the plaintiffs by the wood treatment defendants was routinely used as firewood in the homes of the plaintiffs and in some cases used as cooking fuel.

d. Treated wood ties from time to time would be placed on or near the property of one or more of the plaintiffs for storage prior to their being sold or removed by the wood treatment defendants for some other purpose.

e. Subsurface water lying under the real estate of the plaintiffs has been and remains contaminated with the chemicals used by the wood treatment defendants as a consequence of the chemicals being spilled and otherwise placed on the soil of the treatment facility and otherwise placed in leaking containment ponds such that the ground water and the aquifers underlying the Somerville area is now contaminated.

f. One or more of the plaintiffs has in the past experienced "oily tasting" water drawn from fresh water wells in the Somerville area.

g. One or more of Plaintiffs' houses and real estate have become contaminated with dioxins/furans, PAHs and other toxic molecules released from the aforesaid wood treatment facility.

h. The plaintiffs have and continue to experience noxious odors emanating from the aforesaid wood treatment facility.

i. The plaintiffs have and continue to experience poisonous dusts released from the aforesaid wood treatment facility settle from the air onto their respective properties in the Somerville area.

19. BNSF has represented to the Texas Natural Resource Conservation Commission that it assumes responsibility for the historic contamination of the Somerville site.

20. Independent testing has verified the presence of toxic compounds including dioxins/furans and PAHs inside the homes of Somerville residents. Likewise, independent testing has verified the presence of toxic compounds including dioxins/furans and PAHs in the residential soil of the Somerville area.

21. The nature and make-up of the aforesaid compounds establish that the Somerville site is the generator of these compounds.

22. Governmental mandated testing of soil, sediment, surface and sub-surface water on the Somerville site has verified the presence of the toxic and dangerous compounds.

23. The Texas Natural Resource Conservation Commission (TNRCC) has documented the contamination of the aquifer underlying the Somerville area.

24. The TNRCC has documented soil contamination at the Somerville site.

25. Surface water run-off from the Somerville site has carried contaminated sediment to the waters of Thompson Creek and other natural drainage features resulting in off-site contamination of the Somerville area.

26. As a consequence of the foregoing, but not limited to the foregoing, activities of the wood treatment defendants toxic substances including PAHs, dioxins/furans, arsenic and other dangerous and deadly toxins were at all relevant times generated and released from the Facility.

27. During the relevant time period in question, Penta Defendants sold pentachlorophenol-containing products to Wood Treatment Defendants and they allowed the toxic fumes to escape and permeate neighboring homes and properties, further exposing the residents to these dangerous compounds.

28. Furthermore, the pentachlorophenol-containing products, were routinely stored outside at the Facility. Because pentachlorophenol-containing products were stored without cover or protection, the chemicals were allowed to disperse throughout the neighborhood, further contaminating Plaintiffs' homes, properties, and persons.

29. During the relevant time period in question, the Wood Treatment Defendants also improperly disposed of unwanted chemicals and contaminated dirt by dumping the refuse outside at the Facility. These acts further contaminated Plaintiffs' homes, properties and persons.

30. During the relevant time in question, the Penta Defendants' representatives and/or agents visited the facilities on a regular basis to deliver, sell and/or promote their products to the Wood Treatment Defendants. The Penta Defendants' representatives and/or agents also visited the Facility to instruct the Wood Treatment Defendants' employees on how to mix and/or formulate chemicals. Clearly, the manner in which the Wood Treatment Defendants' operated the Facility was open and obvious to the Penta Defendants' representatives and/or agents, who, notwithstanding the obvious hazards posed to the Wood



Treatment Defendants' employees and those living in the community, failed to warn or instruct the Wood Treatment Defendant of the hazards posed by their products.

31. These and other acts by the Defendants, as more fully discussed herein and incorporated by reference, caused the contamination of Plaintiffs' homes and properties that in many instances still exists today and which have also caused Plaintiffs to suffer debilitating health effects.

V.  
COUNT I: NEGLIGENCE  
BY THE WOOD TREATMENT DEFENDANTS

32. From a date not exactly known to Plaintiffs until the present, the Wood Treatment Defendants, collectively or individually operated a wood treatment facility and/or owned the premises upon which the wood treatment facility operated in the city limits of Somerville, Texas. Plaintiffs allege that during, and subsequent to, the operation of such plant, the Wood Treatment Defendants collectively and/or individually, accepted into, placed into, and/or caused to be placed into the Facility, toxic and hazardous substances and chemicals and subsequently allowed and failed to prevent the toxic and hazardous wastes, substances and chemicals to escape from the Facility into the ground, water and air under, above and about the Facility.

33. Plaintiffs allege that the acceptance and introduction of the toxic and hazardous substances and chemicals into the aforesaid plant by the Wood Treatment Defendants collectively or individually, and the subsequent exposures of such toxic and hazardous substances and chemicals to Plaintiffs and subsequent failures to prevent such toxic and hazardous substances and chemicals to escape from the Facility into the ground, water and air under, above and about the Facility are the proximate and/or producing

causes(s) of the damages accruing to Plaintiffs, said damages being likewise more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT I: NEGLIGENCE  
BY THE PENTA DEFENDANTS

34. Pleading additionally and alternatively, and without waiving any of the foregoing, Plaintiffs allege and would show that from a date not exactly known to Plaintiffs at this time until the present, the Penta Defendants collectively and/or individually, sold to, provided to, consigned to, transported to, and /or otherwise conveyed to the Wood Treatment Defendants (or caused to be sold to, provided to, consigned to, transported to and/or otherwise conveyed to the Wood Treatment Defendants), toxic and hazardous chemicals, solvents, substances, and/or materials which were conceptualized, designed, formulated, generated, manufactured and/or otherwise produced and placed into the stream of commerce by the Penta Defendants, collectively and/or individually. The said toxic and hazardous chemicals, solvents, substances, and/or materials include pentachlorophenol-containing products.

35. Said chemicals were accepted and introduced by collectively and/or individually by the Penta Defendants into the Facility in Somerville, Texas, said Facility being operated and/or owned, or in the care, custody and/or control of the Wood Treatment Defendants, collectively and/or individually. Plaintiffs allege that the sale of, provision of, consignment of, transportation of and/or conveyance otherwise of toxic and hazardous chemicals, solvents, substances, and/or materials by the Penta Defendants, collectively and/or individually to the Wood Treatment Defendants, collectively and/or individually, and the subsequent exposures to such toxic and hazardous chemicals, solvents, substances, and/or materials are the proximate and/or producing cause(s) of the



damages accruing to Plaintiffs, said damages being likewise more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

36. The conduct of the Penta Defendants, both jointly and severally, constituted negligence, such negligence being the proximate cause or producing cause of the damages suffered by Plaintiffs amounting to a sum within the jurisdictional limits of this Court.

COUNT II:  
NEGLIGENCE IN FAILURE TO MONITOR AND DISCOVER  
BY THE WOOD TREATMENT DEFENDANTS

37. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that the Wood Treatment Defendants, collectively and/or individually, accepted toxic and hazardous chemicals, solvents, substances, and/or materials at the Facility. The Wood Treatment Defendants, collectively and/or individually failed to monitor their procedures and receipts in such a way as to discover that such materials were in fact toxic and hazardous chemicals, solvents and substances. The Wood Treatment Defendants, collectively and/or individually, failed to prevent the toxic and hazardous chemicals, solvents and substances from escaping from the Facility into the ground, water and air under, above and about the Facility. Plaintiffs allege that the failure(s) to monitor and discover, the acceptance(s) and introduction(s) of such toxic and hazardous chemicals, solvents and substances into the Facility and the subsequent uncontrolled releases into the ground, water and air at the hands of the Wood Treatment Defendants, collectively and/or individually as set out more fully and specifically herein, are the proximate and/or producing cause(s) of the damages accruing to Plaintiffs, said damages being likewise more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT II:  
NEGLIGENCE IN FAILURE TO MONITOR AND DISCOVER  
BY THE PENTA DEFENDANTS

38. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that from a date not exactly known to Plaintiffs at this time, Penta Defendants, collectively and/or individually, sold to, provided to, consigned to, transported to, and/or otherwise conveyed to the Wood Treatment Defendants, (or caused to be sold to, provided to, consigned too, transported to and/or otherwise conveyed to Penta Defendants), toxic and hazardous chemicals, solvents and substances which were conceptualized, formulated, generated, manufactured and/or otherwise produced by Penta Defendants, collectively and/or individually. Said toxic and hazardous chemicals, solvents and substances were accepted and introduced by the Wood Treatment Defendants collectively and/or individually, into the Facility, said Facility being operated and/or owned, or in the care, custody and/or control of the Wood Treatment Defendants collectively and/or individually. Penta Defendants, either collectively or individually, failed to conduct their business and monitor their procedures in such a way as to discover that such chemicals, solvents and substances were in fact toxic and hazardous. Plaintiffs allege that the sale of, provision of, consignment of, transportation of and/or conveyance otherwise of the toxic and hazardous chemicals, solvents and substances by Penta Defendants either collectively or individually, are the proximate and/or producing cause(s) of the damages accruing to Plaintiffs, said damages being likewise more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT III:  
NEGLIGENCE IN FAILURE TO WARN  
BY THE WOOD TREATMENT DEFENDANTS

39. Pleading additionally and alternatively, without waiving any previous pleading and incorporating same by reference herein, Plaintiffs allege that acts and omissions of the Wood Treatment Defendants either collectively or individually constituting negligence--failure to warn include, but are not necessarily limited to the allegations that:

- \* the Wood Treatment Defendants, either collectively or individually, knew, or in the exercise of due caution as prudent operators of a formulating, storage and disposal plant, should have known of and should have discovered the danger to human life presented by the toxic and hazardous chemicals, solvents and substances which they/it accepted and placed into the Facility;
- \* the Wood Treatment Defendants, either collectively or individually, failed to determine the hazards, nature, composition and toxicity of such chemicals, solvents and substances;
- \* the Wood Treatment Defendants, either collectively or individually, exposed the Plaintiffs and others of the general public to the toxic and hazardous chemicals, solvents and substances through uncontrolled releases into the ground, water and air on, above and about the Facility;
- \* the Wood Treatment Defendants, either collectively or individually failed to warn the Plaintiffs and other persons of the general public of the hazards posed to them by the release of the chemicals, solvents and substances into the ground, water and air.

40. The negligence of the Wood Treatment Defendants, either collectively or individually, in failing to warn the Plaintiffs of the hazards described above has resulted

in, and is and was the proximate and/or producing cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT III:  
NEGLIGENCE IN FAILURE TO WARN  
BY THE PENTA DEFENDANTS

41. Pleading additionally and alternatively, without waiving any previous pleading and incorporating same by reference herein, Plaintiffs allege that acts and omissions of the Penta Defendants either collectively or individually constituting negligence—failure to warn include, but are not necessarily limited to the allegations that:

- \* the Penta Defendants either collectively or individually, failed to give proper warnings or instructions regarding the dangerous and hazardous propensities and characteristics of the chemicals being sold;
- \* the Penta Defendants either collectively or individually, failed to give proper warnings or instructions regarding the proper handling, mixing, storage, clean-up and/or disposal of the chemicals being sold;
- \* the Penta Defendants either collectively or individually, failed to warn of the dangers posed to humans and the environment to long-term exposure to their products;
- \* the Penta Defendants, either collectively or individually, withheld information known to them about the hazardous propensities and characteristics of the products being sold;
- \* the Penta Defendants, either collectively or individually, failed to provide proper, complete or timely information to distribute and/or failed to take adequate steps to

insure that product information was communicated; and

- \* the Penta Defendants, either collectively or individually, failed to adequately instruct or warn of the proper disposal methods for their products.

42. The negligence of the Penta Defendants, either collectively or individually, in failing to warn the Plaintiffs of the hazards described above has resulted in, and is and was the proximate and/or producing cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT IV:  
NEGLIGENCE IN FAILURE TO INTERVENE IN  
TIMELY MANNER TO PREVENT INJURY  
BY THE WOOD TREATMENT DEFENDANTS

43. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and omissions of the Wood Treatment Defendants, either collectively or individually constituting negligence – failure to intervene include, but are not necessarily limited to the allegations that the Wood Treatment Defendants, either collectively or individually failed to intervene in a timely and prudent manner consistent with procedures recognized by the industry to prevent and/or contain and/or monitor and/or control the releases of toxic and hazardous chemicals, solvents and substances into the soil, water and air in order to minimize or eliminate the exposure of the Plaintiffs and other persons to the material. The negligence of the Wood Treatment Defendants, either collectively or individually in failing to intervene in a timely manner as described above has resulted in, and is and was proximate and/or producing cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of



this Court.

COUNT IV:  
NEGLIGENCE IN FAILURE TO INTERVENE IN  
TIMELY MANNER TO PREVENT INJURY  
BY THE PENTA DEFENDANTS

44. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and omissions of the Penta Defendants, either collectively or individually, constituting negligence -- failure to intervene include, but are not necessarily limited to the allegations that the Penta Defendants, failed to intervene in a timely and prudent manner consistent with procedures recognized by the industry to require the purchasers, consignees, operators or receivers otherwise of the toxic and hazardous chemicals, solvents and substances, to prevent the release of such material into the soil, water and air on, above, under and about the Facility in order to minimize or eliminate the exposure of the Plaintiffs and other persons to the material. The negligence of the Penta Defendants, either collectively or individually in failing to intervene in a timely manner as described above has resulted in, and is and was proximate and/or producing cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT V:  
DESIGN DEFECT  
BY THE PENTA DEFENDANTS

45. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that the toxic and hazardous chemicals, and/or substances that were conceptualized, formulated, generated, manufactured and/or otherwise produced by the Penta Defendants, collectively and/or

individually, were defectively designed in that said products were unreasonably dangerous, taking into consideration the utility of the product and the risk involved in its use. Furthermore, the containers and/or packages in which these toxic and hazardous chemicals, and/or substances were shipped were defective in that the containers and/or packages leaked, ripped, tore or otherwise allowed the chemicals to spill, leak, or otherwise discharge at the Facility. The defective design of the toxic and hazardous chemicals, and/or substances that were conceptualized, formulated, generated, manufactured and/or otherwise produced by the Penta Defendants, and their packaging either collectively and/or individually, has resulted in, and is and was proximate and/or producing cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

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COUNT VI:  
BREACH OF EXPRESS AND IMPLIED WARRANTIES  
BY THE PENTA DEFENDANTS

46. Pleading additionally and alternatively, without waving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that the Penta Defendants expressly and impliedly warranted that the chemicals in question were properly and safely designed, tested, and manufactured, were of merchantable quality and fit for the particular use for which they were supplied. In fact, the chemicals in question were not as they were warranted to be, but were unsafe, dangerous and defective, and the the Penta Defendants' breach of warranty were the producing and/or the proximate cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

COUNT VII:  
NEGLIGENT MISREPRESENTATION  
BY THE WOOD TREATMENT DEFENDANTS

47. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that the acts and omissions of the Wood Treatment Defendants either collectively or individually, as set out heretofore, constitute negligent misrepresentation, as that term is known and understood in Texas, and that such acts and omissions were and are producing and/or the proximate cause of the damages accruing to the Plaintiffs, said damages being more fully set out herein and amounting to a sum within the jurisdictional limits of this Court.

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COUNT VIII:  
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS  
BY THE WOOD TREATMENT DEFENDANTS

48. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and omissions of the Wood Treatment Defendants, either collectively or individually, which constitute intentional infliction of emotional distress include, but are not necessarily limited to those allegations that:

- \* the Wood Treatment Defendants, either collectively or individually, had full knowledge of the nature and toxicity of the toxic and hazardous chemicals, solvents and substances which the Wood Treatment Defendants, collectively or individually accepted and subsequently placed into their/its formulating, storage and/or disposal plant;
- \* the Wood Treatment Defendants, either collectively or individually, willfully and



with full knowledge of the grave, and sometimes fatal, consequences to the Plaintiffs and persons of the general public, allowed toxic and hazardous wastes, chemicals, solvent and substances to freely release into the soil, water and air on, under and about the Facility;

\* the Wood Treatment Defendants, either collectively or individually, had full knowledge of the consequences of the introduction of such toxic and hazardous chemicals, solvent and substances into the Facility and with conscious indifference to those consequences, made a conscious decision to endanger the lives of the Plaintiffs;

\* the Wood Treatment Defendants, either collectively or individually, knew full well ~~of the consequences of its acts and omissions in allowing the toxic and hazardous~~ chemicals, wastes, solvents and substances to release into the soil, water and air on, under, above and about the Facility and with conscious indifference to those consequences, made a conscious decision to endanger the lives and property of the Plaintiffs and other persons of the general public as well as to endanger the ground and waters in the vicinity of the Facility and those areas in proximity to the Facility in question.

49. The conduct on the part of the Wood Treatment Defendants, either collectively or individually, given the knowledge alleged heretofore by Plaintiffs, constitutes a flagrant disregard for the rights of the Plaintiffs and others, with actual awareness on the part of the Wood Treatment Defendants, either collectively or individually, that their actions would, in reasonable probability, result in great bodily harm. The Wood Treatment Defendants either collectively or individually, acted intentionally and recklessly, and such

conduct was extreme and outrageous. The actions of the Wood Treatment Defendants either collectively or individually, (as alleged by Plaintiffs now to constitute intentional infliction of emotional distress), caused and continue to cause (both proximately and as a producing cause) the severe emotional distress of Plaintiffs, amounting to a sum within the jurisdictional limits of this Court.

COUNT VIII:  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
BY THE PENTA DEFENDANTS

50. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and omissions of the Penta Defendants, either collectively or individually, constituting intentional infliction of emotional distress include, but are not necessarily limited to those allegations that:

- \* the Penta Defendants, either collectively or individually, had full knowledge of the nature and toxicity of the toxic and hazardous chemicals, solvents and substances which the Wood Treatment Defendants, either collectively or individually, accepted and subsequently introduced into its/their plant;
- \* the Penta Defendants, either collectively or individually, willfully and with full knowledge of the consequences to those Plaintiffs exposed to the toxic and hazardous chemicals, solvents and substances, wholly failed to even try to prevent the easily foreseeable exposures to such Plaintiffs to such toxic and hazardous chemicals, solvents and substances;
- \* the Penta Defendants, either collectively or individually, knew full well of the consequences of their acts and omissions as set out in this paragraph and with

conscious indifference to those consequences, made a conscious decision to endanger the lives of the Plaintiffs and other persons of the general public as well as to endanger the ground, water and air in the vicinity of the Facility and those areas in proximity to the Facility in question.

51. The conduct on the part of the Penta Defendants, either collectively or, individually, given the knowledge alleged heretofore by Plaintiffs, constitutes a flagrant disregard for the rights of the Plaintiffs and others, with actual awareness on the part of the the Penta Defendants, either collectively or individually, that their actions would, in reasonable probability, result in great bodily harm. The Penta Defendants, either collectively or individually, acted intentionally and recklessly, and such conduct was ~~extreme and outrageous.~~ The actions of the Penta Defendants, either collectively or individually, (as alleged by Plaintiffs now to constitute intentional infliction of emotional distress), caused and continue to cause (both proximately and as a producing cause) the severe emotional distress of Plaintiffs, amounting to a sum within the Jurisdictional limits of this Court.

COUNT IX:  
NUISANCE  
BY THE WOOD TREATMENT DEFENDANTS

52. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that the Wood Treatment Defendants, either collectively or individually, knowingly accepted and placed into its Facility in question, toxic and hazardous chemicals, solvents and substances. In its/their processes, the Wood Treatment Defendants, generated, or caused to be generated, toxic and hazardous wastes. Such defendants have knowingly failed to

properly dispose of such wastes, and, have knowingly improperly stored such wastes. Such toxic and hazardous chemicals, solvents, substances and wastes have escaped the confines of the toxic plant. Such improper, excessive and unusual use of the Facility and associated property has proximately and/or directly caused injury and/or harm and/or inconvenience to Plaintiffs. Such invasion and interference of Plaintiffs' rights was substantial, material and unreasonable. Such acts and/or omissions of the Wood Treatment Defendants, either collectively or individually, has resulted in, and continues to result in to this day, the interference in the Plaintiffs' use and enjoyment of their real property and personal rights and constitutes nuisance and/or nuisance per se. The interference of the Wood Treatment Defendants, either collectively or individually, with the Plaintiffs' use of their real property was and is proximate and/or producing cause of damages accruing to Plaintiffs amounting to a sum within the jurisdictional limits of this Court. The damages and injuries described herein include, but are not limited to personal discomfort, annoyance, inconvenience, impairment of health, physical pain and mental anguish, loss of market value, or other value of property, real and personal, as well as loss of use and enjoyment of the property, both in the past and future.

COUNT X:  
TRESPASS

BY THE WOOD TREATMENT DEFENDANTS

53. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that the Wood Treatment Defendants, either collectively or individually, knowingly released into the ground, water and air toxic and hazardous chemicals, wastes, solvents and substances and/or chemicals and/or materials containing or consisting of toxic and hazardous waste,

substance and/or chemicals. As alleged by Plaintiffs herein and restated herein by reference, Plaintiffs' property was detrimentally affected as the direct result of contaminants encroaching upon said property from uncontrolled surface, subsurface and airborne releases from the Facility into the soil, water and air adjacent to Plaintiffs' property. Such encroachment of the toxic and hazardous chemicals, wastes, solvents and substances onto and into the property of Plaintiffs, proximately and/or directly caused by acts and omissions of the Wood Treatment Defendants, either collectively or individually, constitutes trespass as that term is understood in the State of Texas. As the direct and proximate result of trespass of the Wood Treatment Defendants, either collectively or individually, Plaintiffs have sustained injuries and damages amounting to a sum within the jurisdictional limits of this Court.

COUNT XII:  
MALICE/INTENTIONAL CONDUCT  
BY THE WOOD TREATMENT DEFENDANTS

54. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and/or omissions of the Wood Treatment Defendants, either collectively or individually, as plead now and as plead heretofore, constitute malice as that term is understood in Texas law, said allegations including, but not limited to the following that:

- \* the Wood Treatment Defendants, either collectively or individually, had full knowledge of the nature and toxicity of the toxic and hazardous chemicals, solvents and substances which the Wood Treatment Defendants, collectively or individually accepted and subsequently placed into their/its formulating plant;
- \* the Wood Treatment Defendants, either collectively or individually, willfully and



with full knowledge of the grave, and sometimes fatal, consequences to the Plaintiffs and persons of the general public, allowed toxic and hazardous wastes, chemicals, solvents and substances to freely release into the soil, water and air on, under and about the Facility;

\* the Wood Treatment Defendants, either collectively or individually, had full knowledge of the consequences of the introduction of such toxic and hazardous chemicals, solvents and substances into the Facility and with conscious indifference to those consequences, made a conscious decision to endanger the lives of the Plaintiffs;

\* the Wood Treatment Defendants, either collectively or individually, knew full well of the consequences of its acts and omissions in allowing the toxic and hazardous chemicals, wastes, solvents and substances to release into the soil, water and air on, under, above and about the Facility and with conscious indifference to those consequences, made a conscious decision to endanger the lives and property of the Plaintiffs and other persons of the general public as well as to endanger the ground and waters in the vicinity of the Facility and those areas in proximity to the Facility in question.

55. The conduct of the Wood Treatment Defendants, either collectively or individually, (as alleged by Plaintiffs now to constitute malice), was conduct specifically intended by Defendants, either collectively or individually to cause substantial injury to the Plaintiffs; and/or was an act that was carried out by the Wood Treatment Defendants either collectively or individually with a flagrant disregard for the rights of others and with actual awareness on the part of the Wood Treatment Defendants, either collectively or

individually, that the act would, in reasonable probability, result in human death, great bodily harm or property damage. Such acts constituting malice have caused in the past, and will in all reasonable probability continue to cause in the future (both proximately and as a producing cause), damages to Plaintiffs, amounting to a sum within the jurisdictional limits of this Court.

56. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and/or omissions of the Penta Defendants, either collectively or individually, as plead now and as plead heretofore, constitute malice, said allegations including, but not limited to the following that:

- \* the Penta Defendants, either collectively or individually, had full knowledge of the nature and toxicity of the toxic and hazardous chemicals, solvent and substances which the Wood Treatment Defendants, either collectively or individually, accepted and subsequently introduced into its/their Facility;
- \* the Penta Defendants, either collectively or individually, willfully and with full knowledge of the consequences to those Plaintiffs exposed to the toxic and hazardous chemicals, solvents and substances in the worksite, wholly failed to even try to prevent the easily foreseeable exposures to such Plaintiffs to such toxic and hazardous chemicals, solvents and substances;
- \* the Penta Defendants, either collectively or individually, knew full well of the consequences of their acts and omissions as set out in this paragraph and with conscious indifference to those consequences, made a conscious decision to endanger the lives of the Plaintiffs and other persons of the general public as well as

to endanger the ground, water and air in the vicinity of the Facility and those areas in proximity to the Facility in question.

57. The conduct of the Penta Defendants, either collectively or individually, (as alleged by Plaintiffs now to constitute malice), was conduct specifically intended by the Penta Defendants, either collectively or individually to cause substantial injury to the claimant; and/or was an act that was carried out by the Penta Defendants, either collectively or individually with a flagrant disregard for the rights of others and with actual awareness on the part of the Penta Defendants, either collectively or individually, that the act would, in reasonable probability, result in human death, great bodily harm or property damage. Such acts constituting malice have caused in the past, and will in all reasonable probability continue to cause in the future (both proximately and as a producing cause), damages to Plaintiffs, amounting to a sum within the jurisdictional limits of this Court.

58. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege that acts and/or omissions of the Wood Treatment Defendants, either collectively or individually, as plead now and as plead heretofore, were undertaken knowingly, willfully and with wanton and conscious disregard for the rights, safety and welfare of the Plaintiffs and others of the general public, exposing Plaintiffs and their property to the toxic and hazardous waste, substances and/or chemicals and/or materials containing, bearing or consisting of toxic and hazardous waste, substances and/or chemicals, and that such conduct on the part of the Wood Treatment Defendants, either collectively or individually, constitutes gross negligence. Additionally, the Wood Treatment Defendants, either collectively or individually, acting willfully, knowledgeably and with wanton and conscious disregard for



the rights, safety and welfare of the Plaintiffs and others of the general public, withheld information regarding the danger and consequences of human exposure to such toxic and hazardous material, and misrepresented same in order to prevent and/or limit its liability for the damages caused by the grossly negligent acts and omissions. Said grossly negligent acts and omissions include, but are not necessarily limited to the following:

- \* the Wood Treatment Defendants, either collectively or individually, had full knowledge of the nature and toxicity of the toxic and hazardous chemicals, solvents and substances which the Wood Treatment Defendants, collectively or individually accepted and subsequently placed into their/its Facility;
- \* the Wood Treatment Defendants, either collectively or individually, willfully and ~~with full knowledge of the grave, and sometimes fatal, consequences to the~~ Plaintiffs and persons of the general public, allowed toxic and hazardous wastes, chemicals, solvents and substances to freely release into the soil, water and air on, under and about the Facility;
- \* the Wood Treatment Defendants, either collectively or individually, had full knowledge of the consequences of the introduction of such toxic and hazardous chemicals, solvents and substances into the Facility and with conscious indifference to those consequences, made a conscious decision to endanger the lives of the Plaintiffs;
- \* the Wood Treatment Defendants, either collectively or individually, knew full well of the consequences of its acts and omissions in allowing the toxic and hazardous chemicals, wastes, solvents and substances to release into the soil, water and air on, under, above and about the Facility and with conscious indifference to those

consequences, made a conscious decision to endanger the lives and property of the Plaintiffs and other persons of the general public as well as to endanger the ground and waters in the vicinity of the Facility and those areas in proximity to the Facility.

59. Plaintiffs further allege that the willful acts of the Wood Treatment Defendants, either collectively or individually, constituting gross negligence as plead now and heretofore are the direct and/or proximate cause of the injuries and damages accruing to the Plaintiffs. For such grossly negligent acts of the Wood Treatment Defendants, either collectively or individually, Plaintiffs are entitled under Texas law and statute to recover exemplary damages from the Wood Treatment Defendants, amounting to a sum within the jurisdictional limits of this Court, as may be awarded by the Court or jury.

~~60. Pleading additionally and alternatively, without waiving any previous~~  
 pleadings and incorporating same by reference herein, Plaintiffs allege that acts and/or omissions of the Penta Defendants, either collectively or individually, as plead now and as plead heretofore, were undertaken knowingly, willfully and with wanton and conscious disregard for the rights, safety and welfare of the Plaintiffs and other of the general public, exposing Plaintiffs and their property to the toxic and hazardous waste, substances and/or chemicals and/or materials containing, bearing or consisting of toxic and hazardous waste, substances and/or chemicals, and that such conduct on the part of the Penta Defendants, either collectively or individually, constitutes gross negligence. Additionally, the Penta Defendants, acting willfully, knowledgeably and with wanton and conscious disregard for the rights, safety and welfare of the Plaintiffs and others of the general public, withheld information regarding the danger and consequences of human exposure to such toxic and hazardous material, and misrepresented same in order to prevent and/or limit its liability for

the damages caused by the grossly negligent acts and omissions, which include, but are not necessarily limited to the following:

- \* the Penta Defendants, either collectively or individually, had full knowledge of the nature and toxicity of the toxic and hazardous chemicals, solvents and substances which the Wood Treatment Defendants, either collectively or individually, accepted and subsequently introduced into its/their plant;
- \* the Penta Defendants, either collectively or individually, willfully and with full knowledge of the consequences to those Plaintiffs exposed to the toxic and hazardous chemicals, solvents and substances, wholly failed to even try to prevent the easily foreseeable exposures to such Plaintiffs to such toxic and hazardous chemicals, solvents and substances;

- 
- \* the Penta Defendants, either collectively or individually, knew full well of the consequences of their acts and omissions as set out in this paragraph and with conscious indifference to those consequences, made a conscious decision to endanger the lives of the Plaintiffs and other persons of the general public as well as to endanger the ground, water and air in the vicinity of the Facility and those areas in proximity to the Facility.

61. Plaintiffs further allege that the willful acts of the Penta Defendants, either collectively or individually, constituting gross negligence as plead now and heretofore are the direct and/or proximate cause of the injuries and damages accruing to the Plaintiffs. For such grossly negligent acts of the Penta Defendants, either collectively or individually, Plaintiffs are entitled to recover exemplary damages from the Penta Defendants, either collectively or individually, as may be awarded by the Court or jury, amounting to a sum

within the jurisdictional limits of this Court.

62. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein, are jointly and severally liable for the injuries and damages accruing to the Plaintiffs, proximately caused by the acts and omissions of said Defendants plead herein and heretofore, said injuries and damages amounting to a sum within the jurisdictional limits of this Court.

COUNT XI:  
VIOLATION OF 42 U.S.C. § 1981 BY ALL DEFENDANTS

63. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein have violated 42 U.S.C. § 1981 by their acts of intentional racial discrimination, and by its vestiges, which continue to date.

64. Plaintiffs have been damaged and are being damaged by the racial segregation and discrimination and the failure of Defendants to eliminate the vestiges of such segregation and discrimination.

65. Defendants' obligation to eliminate the vestiges of segregation and discrimination and their failure to comply with those obligations are ongoing.

66. Plaintiffs were not reasonable aware of all damages resulting from the racial discrimination until less than one year prior to the filing of this action, and the claims therein did not accrue until less than one year before the filing of this action.

67. Defendants fraudulently concealed and positively misrepresented many of the effects of their racial discrimination and thereby kept Plaintiffs from being reasonable aware of the damage from the discrimination.

68. Defendants' acts of discrimination and fraudulent concealment and misrepresentation of fraudulent in nature. Plaintiffs were not fully aware or may not yet be fully aware of all of the misrepresentations and all damages, so effective have been Defendants' misrepresentations and concealments.

COUNT XII:  
VIOLATION OF 42 U.S.C. § 1982 BY ALL DEFENDANTS

69. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein have violated 42 U.S.C. § 1982 by their acts of intentional racial discrimination, and by its vestiges, which continue to date.

70. Section 1982 provides "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." Defendants have violated Plaintiffs' rights under this provision. As a proximate result, Plaintiffs have been damaged.

71. Actions of Defendants were intentional.

72. Plaintiffs have been damaged and are being damaged by the racial segregation and discrimination and the failure of Defendants to eliminate the vestiges of such segregation and discrimination.

73. Defendants' obligation to eliminate the vestiges of segregation and discrimination and their failure to comply with those obligations are ongoing.

74. Plaintiffs were not reasonable aware of all damages resulting from the racial discrimination until less than one year prior to the filing of this action, and the claims therein did not accrue until less than one year before the filing of this action.



75. Defendants fraudulently concealed and positively misrepresented many of the effects of their racial discrimination and thereby kept Plaintiffs from being reasonable aware of the damage from the discrimination.

76. Defendants' acts of discrimination and fraudulent concealment and misrepresentation of fraudulent in nature. Plaintiffs were not fully aware or may not yet be fully aware of all of the misrepresentations and all damages, so effective have been Defendants' misrepresentations and concealments.

COUNT XIII:  
VIOLATION OF 42 U.S.C. § 1983 BY ALL DEFENDANTS

77. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein have violated 42 U.S.C. § 1983 by their acts of intentional racial discrimination, and by its vestiges, which continue to date.

78. While action under color of state law, Defendants intentionally caused the deprivation of rights secured to Plaintiffs under the Constitution and laws of the United States, intentionally violating Plaintiffs' rights under the due process and equal protection provisions of the United States Constitution and federal law to be free from race discrimination.

79. Plaintiffs have been damaged and are being damaged by the racial segregation and discrimination and the failure of Defendants to eliminate the vestiges of such segregation and discrimination.

80. Defendants' obligation to eliminate the vestiges of segregation and discrimination and their failure to comply with those obligations are ongoing.

81. Plaintiffs were not reasonable aware of all damages resulting from the racial



discrimination until less than one year prior to the filing of this action, and the claims therein did not accrue until less than one year before the filing of this action.

82. Defendants fraudulently concealed and positively misrepresented many of the effects of their racial discrimination and thereby kept Plaintiffs from being reasonable aware of the damage from the discrimination.

83. Defendants' acts of discrimination and fraudulent concealment and misrepresentation of fraudulent in nature. Plaintiffs were not fully aware or may not yet be fully aware of all of the misrepresentations and all damages, so effective have been Defendants' misrepresentations and concealments.

COUNT XIV:  
VIOLATION OF 42 U.S.C. § 1985(3) BY ALL DEFENDANTS

84. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein have violated 42 U.S.C. § 1985(3) by their acts of intentional racial discrimination, and by its vestiges, which continue to date.

85. Defendants conspired with one another to deprive Plaintiffs of their rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and the laws of the United States.

86. Plaintiffs have been damaged and are being damaged by the racial segregation and discrimination and the failure of Defendants to eliminate the vestiges of such segregation and discrimination.

87. Defendants' obligation to eliminate the vestiges of segregation and discrimination and their failure to comply with those obligations are ongoing.

88. Plaintiffs were not reasonable aware of all damages resulting from the racial

discrimination until less than one year prior to the filing of this action, and the claims therein did not accrue until less than one year before the filing of this action.

89. Defendants fraudulently concealed and positively misrepresented many of the effects of their racial discrimination and thereby kept Plaintiffs from being reasonable aware of the damage from the discrimination.

90. Defendants' acts of discrimination and fraudulent concealment and misrepresentation of fraudulent in nature. Plaintiffs were not fully aware or may not yet be fully aware of all of the misrepresentations and all damages, so effective have been Defendants' misrepresentations and concealments.

COUNT XV:  
VIOLATION OF 42 U.S.C. § 2000d BY ALL DEFENDANTS

91. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein have violated 42 U.S.C. § 2000d by their acts of intentional racial discrimination, and by its vestiges, which continue to date.

92. At all times relevant to this action, private Defendants were recipients of federal assistance within the meaning of 42 U.S.C. § 2000d. Defendants' intentional acts of racial discrimination deprived Plaintiffs of rights secured to them by Section 2000d.

93. Plaintiffs have been damaged and are being damaged by the racial segregation and discrimination and the failure of Defendants to eliminate the vestiges of such segregation and discrimination.

94. Defendants' obligation to eliminate the vestiges of segregation and discrimination and their failure to comply with those obligations are ongoing.

95. Plaintiffs were not reasonable aware of all damages resulting from the racial

discrimination until less than one year prior to the filing of this action, and the claims therein did not accrue until less than one year before the filing of this action.

96. Defendants fraudulently concealed and positively misrepresented many of the effects of their racial discrimination and thereby kept Plaintiffs from being reasonable aware of the damage from the discrimination.

97. Defendants' acts of discrimination and fraudulent concealment and misrepresentation of fraudulent in nature. Plaintiffs were not fully aware or may not yet be fully aware of all of the misrepresentations and all damages, so effective have been Defendants' misrepresentations and concealments.

COUNT XVI:  
VIOLATION OF 42 U.S.C. § 3604 BY ALL DEFENDANTS

98. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that all Defendants herein have violated 42 U.S.C. § 3604 by their acts of intentional racial discrimination, and by its vestiges, which continue to date.

99. Defendants' intentional acts deprived Plaintiffs of their rights to fair housing and all other benefits secured to them by Section 3604.

100. Plaintiffs have been damaged and are being damaged by the racial segregation and discrimination and the failure of Defendants to eliminate the vestiges of such segregation and discrimination.

101. Defendants' obligation to eliminate the vestiges of segregation and discrimination and their failure to comply with those obligations are ongoing.

102. Plaintiffs were not reasonable aware of all damages resulting from the racial discrimination until less than one year prior to the filing of this action, and the claims

therein did not accrue until less than one year before the filing of this action.

103. Defendants fraudulently concealed and positively misrepresented many of the effects of their racial discrimination and thereby kept Plaintiffs from being reasonable aware of the damage from the discrimination.

104. Defendants' acts of discrimination and fraudulent concealment and misrepresentation of fraudulent in nature. Plaintiffs were not fully aware or may not yet be fully aware of all of the misrepresentations and all damages, so effective have been Defendants' misrepresentations and concealments.

COUNT XVII:  
FRAUDULENT CONCEALMENT

105. Pleading additionally and alternatively, without waiving any previous pleadings and incorporating same by reference herein, Plaintiffs allege and would show that Defendants have engaged in fraudulent concealment.

106. OSHA regulations, federal and Texas environmental statutes and regulations and Texas common law create a duty on the part of Defendants to report and warn employees of dangers associated with their work, e.g., potential exposure to hazardous wastes and toxic substances to its workers.

107. Defendants breached this duty to Plaintiffs in the following manner:

- a. failure to warn the workers or their families of the hazards associated with their daily exposure to hazardous wastes and hazardous chemicals. Specifically, as to Plaintiffs, Defendants fraudulently concealed the Plaintiffs were in daily contact with hazardous wastes and chemicals to would or could adversely affect Plaintiffs' health, that special training was necessary to safely work around hazardous wastes and chemicals, and that, without

proper safety equipment, it was unsafe and dangerous to Plaintiffs' health to work around the hazardous wastes and chemicals:

- b. concealing from Plaintiffs the results of health monitoring of individual workers
  - c. concealing from federal and state agencies that Defendants were not providing Plaintiffs a safe environment in which to work because of exposure to hazardous chemicals and wastes and that it had no intention of doing so.
  - d. Concealing from Plaintiffs that their clothes were contaminated at work and that bringing the clothes home could or would adversely affect the health of their families, friends and neighbors.
- 

108. Failure of Defendants to disclose to Plaintiffs such information in direct violation of federal and state law constitutes a concealment of material facts that should have been made known to Plaintiffs. This concealment of and/or failure to report the material facts to Plaintiffs is fraudulent concealment.

109. Plaintiffs have been damaged and are being damaged by Defendants' fraudulent concealment.

#### VI. DAMAGES

110. Plaintiffs have incurred damages proximately or directly caused by the acts and omissions of Defendants set out heretofore; said damages that include, but are not necessarily limited to:

- \* bodily injury in the past;
- \* bodily injury in the future;



- \* physical pain and mental anguish in the past;
- \* physical pain and mental anguish in the future;
- \* emotional distress in the past;
- \* emotional distress in the future;
- \* increased risk of disease and other ailments;
- \* reasonable compensatory damages for the costs of medical testing, monitoring, treatment and prevention that will be required in the future as a proximate result of Defendants' pollution, including, but not limited to the costs of making appropriate specialized services and expert advice available to primary health care providers in the community;
- \* payment of the costs of a reasonable adequate study of the extent of pollution caused by Defendants and to monitor and limit the extent of future pollution;
- \* payment of the costs of a reasonable program to advise people affected by Defendants' pollution, of risks associated with such pollution and of measures available to reduce such risks;
- \* payment of the costs of such studies as may be required to adequately assess the health effects of past, present and future pollution on those who live, study and work in the affected community;
- \* medical expense and services in the past;
- \* medical expense and services in the future;
- \* loss of wage earning capacity in the future;
- \* devaluation and/or loss of use and enjoyment of personal property;
- \* devaluation and/or loss of use of personal real property;



- \* devaluation and/or loss of enjoyment of personal real property;
- \* loss of consortium;
- \* all such other damages as allowed by law and as may be shown at time of trial.

PUNITIVE OR EXEMPLARY DAMAGES

111. Additionally, all Plaintiffs are entitled to punitive damages or exemplary damages as may be shown for the grossly negligent acts and omissions of the Defendants, as well as those acts of intentional infliction of emotional distress, malice, fraud, intentional conduct and fraudulent concealment undertaken by Defendants as plead herein and heretofore, amounting to a sum within the jurisdictional limits of this Court.

VII.  
JURY DEMAND

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112. Plaintiffs demand a trial by jury on all accounts.

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final trial Plaintiffs have judgment and recover collectively and severally of and from all Defendants as follows:

- (1) Plaintiffs' actual and compensatory damages in an amount within the jurisdictional limits of this Court;
- (2) Plaintiffs' costs of Court;
- (3) exemplary or punitive damages in an amount within the jurisdictional limits of this Court as may be found just by the Court or jury;
- (4) pre and post judgment interest on all such amounts at the maximum legal rate until such amounts are paid to Plaintiffs; and,
- (5) such other and further relief, both at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

*Grover G. Hankins*

Grover G. Hankins  
Texas Bar No. 00795895

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served upon all counsel of record this 23<sup>rd</sup> day of December 2005 by certified mail, return receipt requested; regular mail; hand delivery and/or facsimile.

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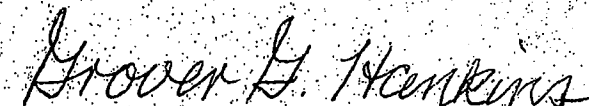
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INA CROSS  
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DUWONN EVANS  
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LEE R FISHER  
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DEONTE HAGAN  
KENYIDA HAGAN  
KENYIDA HAGAN  
SHARON RAY HAGAN  
LASHARDE HALL  
RHODA LEE HALL  
EDDIE M HAMILTON  
MAXINE B HAMILTON  
MEDERRLE D HAMILTON  
SHANTEL R HAMILTON  
ALBERTA W HANKS  
ERNEST HANKS  
CHANDRA J HARRIS  
ELIZABETH HARRIS  
ELIZABETH RUTH HARRIS  
EUGENIA Y HARRIS  
EUGENIE Y HARRIS  
JAMES E HARRIS  
JAMES E HARRIS JR  
JAMIALYN HARRIS  
JOSEPH HARRIS JR  
KORDERO J HARRIS  
KRYSTAL HARRIS  
LOIS M HARRIS  
NATHAN E HARRIS  
PATRICIA HARRIS  
SHANNON MY'LISA HARRIS  
TRAVIS HARRIS JR  
CALVIN LEE HARRISON JR  
CALVIN LEE HARRISON SR  
RICHYE LEE HARRISON  
GOREE HAWKINS  
RICHARD HAWKINS  
RODNEY HAWKINS  
STEVEN HAWKINS  
BRENT HEATH  
MARGIE HEATH  
SHARON HEATH  
ALEXANDRIA HEMPHILL  
ANISHA HEMPHILL

BRANDON S HEMPHILL  
CRYSTAL S HEMPHILL  
DEBORAH HEMPHILL  
DEBORAH HEMPHILL  
JALEN HEMPHILL  
JOSHUA HEMPHILL  
JUSTIN J HEMPHILL  
KELTON HEMPHILL  
RICA HEMPHILL  
VICTORIA HEMPHILL  
XAVION HEMPHILL  
JAMES HENDERSON  
BARBARA J HESTER  
DOCK HESTER  
JOHNNIE MAE HESTER  
RONALD G HESTER  
SYLVIA HICKMAN  
CHARLIE MAE HICKS  
EVELYN E HILL  
CANTREAS LASHA HOGUES  
DOMINIQUE Y HOGUES  
JESSE L VASQUEZ HOGUES JR  
JESSE LOYD HOGUES  
JESSIE LOYD HOGUES SR  
KARUSHA JAFRIKA YNESHA HOGUES  
MARION ROBERSON HOGUES  
DORA J HOLLIDAY  
LILLY M HOLMES  
OLLIE HOLMES JR  
DEBBIE HORNSBY  
VANIA HORNSBY  
GARLON HUDSON  
MARLON HUDSON  
RONALD HUDSON  
BARBARA HAWKINS HUTSON  
ANDRE ISOM  
DONALD W ISOM  
JOHN L ISOM  
RONALD ISOM  
AUSTINA JACKS  
ANDREA JACKSON  
AUSTIN JACKSON  
AUSTINA JACKSON  
BEVERLY ANN JACKSON  
BRODRICK JACKSON  
CHARLES JACKSON

CHESTER JACKSON  
CHESTER JACKSON JR  
CHRISTOPHER EARL JACKSON  
DEANDREA JACKSON  
DEONTE RAYSHAUN JACKSON  
DIAMONTE DESHAUN JACKSON  
DONNA DAVIS JACKSON  
DOUGLAS D JACKSON  
DOUGLASIA DERAY JACKSON  
FREDRICK ONEAL JACKSON  
JUNASIA DYNETTE JACKSON  
KEISHA ANN JACKSON  
KISHA JACKSON  
MARILYN JACKSON  
MESHELL ANNETTE JACKSON  
MINNIE J JACKSON  
MINNIE R JACKSON  
MOSEVELT JACKSON SR  
PATRICK ONEAL JACKSON  
PEARL JACKSON  
RAY GENE JACKSON  
RICKBY GENE JACKSON  
ROBERT JACKSON  
RODRICK ONEAL JACKSON  
T JACKSON  
THEORDORE JACKSON  
THOMAS JACKSON  
WILLIAM JACKSON  
COREY C JEFFERY  
DONNELL DEVON JENKINS  
CHEYENNE S JOHNSON  
CORISA JOHNSON  
DONNA RUTH JOHNSON  
ELLA MAE JOHNSON  
HIRAM LEE JOHNSON  
J C JOHNSON  
JABARI JOHNSON  
JAHLA JOHNSON  
JAMAR JOHNSON  
JENNIFER MARIE JOHNSON  
JERMY JOHNSON  
JESSICA JOHNSON  
JESSIE LEE JOHNSON JR  
JOHNELL JOHNSON  
JUNE JOHNSON  
LONNIE RAY JOHNSON

PAUL JOHNSON  
RENA MAE JOHNSON  
SHAWN MICHAEL JOHNSON  
TEVIN JAMAL JOHNSON  
TRESA A JOHNSON  
SHANGELIA MOORE LEWIS KENDALL  
ARTHUR D. KENNERSON  
DOROTHY KENNERSON  
RICKIE L KNOX  
DANITA C KYLES  
ELIJAH LAUDERDALE  
KENNETH WAYNE LAUDERDALE  
LINDA GIVENS LAUDERDALE  
MAURIETTE E LAUDERDALE  
BASEL L LISTER  
CLARA LISTER  
EARLENE LISTER  
LAQUITTA G LISTER  
SANDRA LEE LISTER  
VERSIE B LISTER  
ANNIE LEE LOCKETT  
MAXINE LOCKETT  
RAYMOND LOCKETT JR  
RAYMOND LOCKETT SR  
RUFUS LOCKETT  
RUTH E LOVING  
LATREAS E MANAS  
TREAS L MOORE MANAS  
TREAS MOORE MANAS  
WILLIAM J MANAS III  
WILLIAM J MANAS JR  
BRIAN K MANLEY  
HILARIO MARTINEZ JR  
MARCUS MARTINEZ  
NIKKIA J BURNS MATETE  
AREATHIA L MATHIS  
CRAIG LEON MATHIS  
DOROTHY MATHIS  
MARCUS T MATHIS  
NICRAISHA LYON MATHIS  
REBECCA MATHIS  
WILLIE MATHIS JR  
CLAUDOLYN A MCCARTY  
URSALA N MCCARTY  
JESICA MCCLAIN  
BARBARA MCDONALD

JAMES MCDONALD  
JOHONN MCGOWAN SR  
KRISHNA MCGOWAN  
BLOSSIE T MCGREGOR  
RHAUN CHRISTOPHER MCGREGOR  
ROSCOE MCGREGOR JR  
ROSCOE MCGREGOR SR  
MILTON E MCNEIL SR  
PATRICIA ANN MCNEIL  
SHAWN MCNEIL  
CHRISTOPHER MEJIAS  
IRENE MEJIAS  
MANUEL MEJIAS  
MARCUS MEJIAS  
MELISSA MEJIAS  
JULIUS MILLER  
CHELSEA MITCHELL  
ANTHONY MOORE  
CASIE J MOORE  
CHAD MOORE  
CHADRICK MOORE

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CHARLIE JAMES MOORE  
CHRISTOPHER S MOORE  
CORNOLA MOORE  
DOUGLAS N MOORE  
EDNA MOORE  
ERICA M MOORE  
EURALENE MOORE  
GERRY B MOORE  
JONATHAN D MOORE  
JONATHAN DEWAYNE MOORE  
JOYSTENE C MOORE  
KEI AMBER MOORE  
LATASHA MOORE  
LESTER S MOORE  
MINNIE LEE MOORE  
MIRANDA MOORE  
RAVEEN MOORE  
RICHARD MOORE JR  
RICHARD MOORE SR  
ROBERT A MOORE SR  
ROBERT LEE MOORE  
ROMAN MOORE  
ROMAN B MOORE JR  
ROMEO W MOORE  
SHARLA MOORE



SHEILA MOORE  
STEPHANIE E MOORE  
WILLIE MAE MOORE  
WILLIE MAE MOORE  
JASMINE MOSES  
JASMINE MOSES  
MARY MOSES  
MONICA MOSES  
LISA ANN NICKERSON  
MARCUS NICKERSON  
MELONIE NICKERSON  
BRENDA NICKS  
BRENDA NICKS  
BRIAN RACHAD NICKS  
CANDACE NICKS  
KENNETH P NIX  
OLLIE H NIX  
WALTER E NIX SR  
LURISE PAGE  
COURTNEY PARKER  
MICHAEL PARKER  
WINIFORD PARKER  
BOBBY RAY PENNIE  
GEORGE ALBERT PENNIE  
MARGARET PENNIE  
ENRIQUE PEREZ  
JOSEPH PEREZ  
OLIVER PHILLIPS  
PAUL PHILLIPS  
PAULA S PHILLIPS  
PRENTISS GEORGE PHILLIPS  
BEVERLY PLEASANT  
LAKEISHA PLEASANT  
PATRICE PLEASANT  
PATRICK PLEASANT JR  
PATRICK PLEASANT SR  
HARLAN C PLUMBER  
HARLEY PLUMBER  
HERBCHELLE PLUMBER  
HERBERT C PLUMBER JR  
HERBERT PLUMBER JR  
HILLARY PLUMBER  
VICKIE PLUMBER  
CHARLES POLITE  
LABRAYLA POOL  
KENNETH W PORTER

JA'QUENTIN POWELL  
MELVIA H POWELL  
ORA LEE PRICE  
ORA LEE PRICE  
TARRANCE PRICE  
FRANK QUINIERO  
LUTHER ONEAL RAGSTON SR  
SHERRY RAGSTON  
BESSIE M RATLIFF  
HEATHER RATLIFF  
JOSHUA RATLIFF  
MICHELLE RATLIFF  
TONY RATLIFF  
TRACY RATLIFF  
WRIGHT C RATLIFF  
WRIGHT RATLIFF JR  
ANTHONY RAY  
DONNA RAY  
LUELLA RAY  
MORRIS RAY  
NIKITA RAY  
DOCK U'REESE JR  
EVERLENE RELIFORD  
LACRESHIA RELIFORD  
ROESHON RELIFORD  
STANLEY B RELIFORD  
ZEPHYR RELIFORD  
DEBRA J RHODES  
EUREKA S RHODES  
A.D ROBERSON  
ALFRED D ROBERSON  
ALMA ROBERSON  
MILDRED ROBERSON  
RAY ROBERSON  
ARLINDA ROBERTS  
GERALD WAYNE ROBERTS  
KEVIN ROBERTS  
KIASHA ROBERTS  
OTIS ROBERTS JR  
QUNEISHA ROBERTS  
TANETTE L ROBERTS  
OTIS ROBERTSS JR  
EDWARD M ROGERS  
NATHAN ROGERS  
RHONDA ROGERS  
JABORIE RUCKS

NICOLE SHUNTAE RUSSELL  
MARY B SALDIVAR  
JOSHUA SAMS  
DAISY MAE SCARLETT  
MICHAEL KESHAWN SCARLETT  
QURISHA SCARLETT  
DEBORAH SCHICLE  
RARTERRIUS SCHICLE  
ZOCCORRO SCHICLE  
RAJANAE SCYRES  
JAMES SIMPSON  
JAMES DAVIS SIMPSON  
JOSEPHINE SINGLETON  
JAMES M SMITH  
MICHEAL SMITH  
MIKEL SOWDERS  
AUDRESHA SPATES  
CHRISTOPHER MICHAEL SPATES  
BESSIE M SPENCER  
ESTELLA J SPENCER  
GEORGIA SPENCER  
HERBERT SPENCER  
HERBERT SPENCER  
ROSALYN V SPENCER  
BARBARETT STEVENSON  
SHANETRA STEVENSON  
MICHELLE STIFFLEMIRE  
PATRICIA ANN STIFFLEMIRE  
DORIS J STRAIT  
DERRICK K STRINGFELLOW  
BRALA D SWAIN  
ALTON A SWEENEY JR  
ALTON SWEENEY JR  
WALLACE TAYLOR  
MICHAEL TEALER  
COURTNEY D TELSEDE  
RHANLLER THOMAS  
VESTER THOMAS  
CLAUDIS THURMAN SR  
DOROTHY JEAN THURMAN  
DOROTHY THURMON  
DOROTHY JEAN THURMON  
CARNELL TOWNSEND  
CHARLES TOWNSEND  
GLORIA TOWNSEND  
S USIE TOWNSEND

JAMES TOWSEND  
J D TURNER  
JAMES E TURNER  
JATERIA TURNER  
ONIE MAE TURNER  
ONIE MAE TURNER  
JOHNNIE P UNDERWOOD  
RITA Y VASQUEZ  
SYLVIA VEGA  
DALIA VELA  
JOHN M VELA  
MIKE C VELA  
PAULA K WALKER  
CYNTHIA WASHINGTON  
DOROTHY WASHINGTON  
WILLIAM H WASHINGTON  
JAMES WASHISNGTON  
ANTHONY V WATSON  
LEONARD WATSON  
MARY E WATSON  
VIVIAN WATSON  
BILLY GENE WILEY  
DONALD R WILEY  
HENRY WILEY  
WILLIE WILEY  
CLIDY MAE WILLIAMS  
DAVID WILLIAMS  
EDWARD J WILLIAMS  
ETTA J. WILLIAMS  
FAFFY RENAE WILLIAMS  
FREDDIE WILLIAMS  
FREDDIE J WILLIAMS  
JOHNNIE B WILLIAMS  
MARY WOODFORK WILLIAMS  
RUBY J WILLIAMS  
TERRANCE WILLIAMS  
ANTHONY G WILSON  
BARBARA A WILSON  
CARON WILSON  
ERIC WILSON  
FLORENCE GENTRY WILSON  
LAKIETRA R WILSON  
MINNIE WILSON  
TYSON WILSON  
DELOISE M WISE  
MARTIN WISE SR

LELISHA WISEMAN  
STACIE WOODBERRY  
CLARA WOODFORD  
JONAS WOODFORK  
JAYCEE YOUNG  
TERRANCE YOUNG

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